

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
EMILY FORSYTHE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:20-cv-10002
)	
WAYFAIR, LLC)	
)	
Defendant.)	
_____)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, Defendant Wayfair, LLC (“Defendant” or “Wayfair”), moves for summary judgment on all counts of Plaintiff’s Complaint.

Plaintiff resigned from her job at Wayfair in September 2019, after her boss, Kory McKnight, and boss’s boss, Matt Witte, repeatedly counseled her about performance problems amid escalating complaints about Plaintiff from many colleagues. After she resigned, Plaintiff brought this action, claiming that she had actually been terminated in retaliation for an internal complaint she made alleging that a male subordinate sat too close to her twice and once touched her shirt. The Human Resources department investigated that internal complaint and could not substantiate her allegations. The person she claims retaliated against her, McKnight, had no involvement with the internal complaint or investigation.

Plaintiff’s complaint fails to state discrete counts. Wayfair assumes, for purposes of this motion only, that her incoherent complaint intended to state at most three claims under Title VII and M.G.L c. 151B: (1) “tolerating” sexual harassment against Plaintiff by her male

subordinate; (2) purported retaliation by McKnight for her internal complaint against the subordinate; and (3) sex discrimination by McKnight based on two remarks that did not even reference gender. Am. Compl., ¶¶30-31. To the extent that is what Plaintiff is actually claiming, all of these claims fail as a matter of law, as set forth in the accompanying Memorandum of Law and Statement of Undisputed Facts.

Request for Oral Argument

The Defendant requests oral argument on this dispositive motion.

Dated: November 6, 2020

Respectfully submitted,

WAYFAIR, LLC

By its attorney,

/s/ Lynn A. Kappelman

Lynn A. Kappelman (BBO No. 642017)

SEYFARTH SHAW LLP

Seaport East

Two Seaport Lane, Suite 300

Boston, MA 02210-2028

Telephone: (617) 946-4800

Fax: (617) 946-4801

lkappelman@seyfarth.com

RULE 7.1(A)(2) CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), Counsel for Defendant hereby certifies that we attempted to confer with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues raised by Defendant's Motion for Summary Judgment by phone call on November 4, 2020. Plaintiff's counsel indicated that he is considering whether to dismiss his hostile environment sexual harassment claim but has not yet done so, and will decide whether to do so after he reviews Defendant's as-filed brief.

/s/ Lynn A. Kappelman

Lynn A. Kappelman

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2020, a true copy of the foregoing document was electronically filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Lynn A. Kappelman

Lynn A. Kappelman